

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ANNIE OAKLEY ENTERPRISES, :
INC., :

Plaintiff, :

vs. :

CONTINENTAL MANUFACTURING :
CHEMIST, INC., d/b/a CONTINENTAL :
LABORATORIES, :

Defendant. :

CIVIL NO. 4-98-CV-80120

PRELIMINARY JURY INSTRUCTIONS

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PRELIMINARY INSTRUCTION NO. 1

Members of the jury, we are about to begin the trial of the case about which you have heard some details during the process of jury selection. Before the trial begins, however, there are certain instructions you should have in order to better understand what will be presented before you and how you should conduct yourself during the trial. At the end of the trial, I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions - both those I give you now and those I give you later - are equally binding on you and must be followed.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial, and before you retire to deliberate at the close of the case, I will instruct you on the law that you must follow and apply in deciding your verdict.

Since you will be called upon to decide the facts of this case, you should give careful attention to the testimony and evidence presented for your consideration, bearing in mind that I will instruct you concerning the manner in which you should determine the credibility, or "believability," of each witness and the weight to be given to his or her testimony. During the trial, however, you should keep an open mind and should not form or express any opinion about the case one way or the other until you have heard all the testimony and evidence, the closing arguments of the lawyers, and my instructions to you on the applicable law.

You must not discuss the case in any manner among yourselves or with anyone else, nor should you permit anyone to discuss it in your presence. You should avoid reading newspaper articles that might be published about the case, and should also avoid seeing or hearing any television or radio comments about the trial.

During the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the attorneys to object when they believe evidence is not properly admissible. You should not show prejudice against an attorney or client because the attorney has made objections. You should not think that due to any ruling or other comment I may make, that I have any opinions on the merits of the case favoring one side or the other.

If I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 2

Members of the jury: This is a civil case brought by the plaintiff, Annie Oakley Enterprises, Inc., against the defendant, Continental Manufacturing Chemist, Inc. The parties entered an agreement, under which Continental agreed to manufacture body lotion and bath gel for Annie Oakley according to formulas supplied to Continental by Annie Oakley. Annie Oakley marketed and sold the products. Tests showed the products were contaminated. Annie Oakley claims Continental breached the parties' agreement by failing to add the appropriate preservatives to insure the products had a two-year shelf life, and that Annie Oakley has been damaged by this breach.

Continental denies the agreement called for Continental to determine the proper preservatives for the products, denies that it breached the parties' agreement, and denies Annie Oakley's claimed damages.

This summary is given to you by the Court and is not to be considered as evidence in this case. Determine the questions submitted to you from the evidence and apply the law that I will give you.

PRELIMINARY INSTRUCTION NO. 3

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Corporations and private individuals are equal before the law. All the parties and the public expect that, regardless of the consequences, you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

PRELIMINARY INSTRUCTION NO. 4

The trial will proceed in the following order:

After I finish these preliminary instructions, the parties' lawyers may make opening statements. An opening statement is not evidence but is simply a summary of what the lawyer expects the evidence to be. The plaintiff's side will then present evidence, and the defendant's counsel may cross-examine. Following the plaintiff's case, the defendant's side may present evidence, and the plaintiff's counsel may cross-examine. Following the defendant's case, the plaintiff may take the opportunity to present additional evidence.

After the parties have presented their cases and the evidence is concluded, I will further instruct you on the law that you are to apply in reaching your verdict.

After presentation of the evidence is completed and I have further instructed you on the law, the lawyers will make closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

You will then retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 5

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence; the opportunity the witness had to see or hear the things testified about; the witness's memory; any motives that witness may have for testifying a certain way; the age and manner of the witness while testifying; whether that witness said something different at an earlier time; the general reasonableness and probability or improbability of the testimony; and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You should consider whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood. This may depend on whether the contradiction has to do with an important fact or only a small detail.

If you believe from the evidence that a witness previously made a statement that is inconsistent with the witness's testimony at this trial, the only purpose for which you may consider the previous statement is for its bearing on the witness's credibility. It is not evidence that what the witness previously said was true. However, if you believe from the evidence that a witness who is a party made a previous statement that is inconsistent with the party's testimony at this trial, you may consider the previous statement both for its bearing on the party's credibility and as evidence that what the party previously said was true.

You may hear testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion and all the other evidence in the case.

An expert witness may be asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

ICJ 100.4

Dvt 72.03, ICJ 100.4, modified

PRELIMINARY INSTRUCTION NO. 6

You shall base your verdict only on the evidence and these and other instructions that I give you during the trial. Evidence is:

1. Testimony in person or testimony previously given, which includes depositions.
2. Exhibits received by the court.
3. Stipulations that are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. The following are not evidence:

1. Statements, arguments, comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you see or hear about this case outside the courtroom.

8th Cir. 2.03, modified

PRELIMINARY INSTRUCTION NO. 7

Plaintiff and Defendant have agreed to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts as having been proved.

PRELIMINARY INSTRUCTION NO. 8

Unless otherwise instructed, in these instructions, you are told that your verdict depends on whether you find certain facts have been proved by a preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that the issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard, which applies only in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

PRELIMINARY INSTRUCTION NO. 9

During the trial of this case, certain deposition testimony may be read into evidence. A deposition is taken before trial. It consists of questions asked the witness and the witness's answers given under oath. Deposition testimony is preserved in writing. You should consider deposition testimony the same as you would testimony given in court.

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

PRELIMINARY INSTRUCTION NO. 10

During the course of the trial, I occasionally may ask questions of a witness or counsel. Do not assume that I hold any opinion on the matters to which my questions may relate. Remember at all times that you, as jurors, are at liberty to disregard all comments of the court or counsel in arriving at your own findings as to the facts.

PRELIMINARY INSTRUCTION NO. 11

During this trial I will permit you to take notes. Many courts do not permit jurors to take notes, and a word of caution is in order. There is a tendency to attach undue importance to matters that one has written down. Some testimony that is considered unimportant at the time presented, and thus not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory, and you should not compare your notes with the notes of other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case.

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back testimony. You must pay close attention to the testimony as it is given.

PRELIMINARY INSTRUCTION NO. 12

You will not be required to remain together while court is in recess. It is important that you obey the following instructions with reference to court recesses:

First, do not discuss the case either among yourselves or with anyone else during the course of the trial. In fairness to the parties to this lawsuit, you should keep an open mind throughout the trial. You should reach your conclusion only during your final deliberations after all evidence is in and you have heard the attorneys' summations, my instructions to you on the law, and an interchange of views with other jury members.

Second, do not permit any third person to discuss the case in your presence. If anyone does so despite your telling them not to, report that fact to the court as soon as you are able. You should not, however, discuss with other jurors either that fact or any other fact that you feel necessary to bring to the attention of the court.

Third, during the time you serve on this jury, please do not speak, in or out of the courtroom, with any of the parties or their attorneys or any witness. By this I mean not only do not speak about the case, but do not speak at all, even to pass the time of day. In no other way can all parties be assured of the absolute impartiality they are entitled to expect from you as jurors.

IT IS SO ORDERED.

Dated this ____ day of October, 1999.



CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE